

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CHARLES VAUGHAN, JR.,)
Plaintiff,)
)
v.)
)
BANK OF AMERICA,)
Defendant.)
)

Civil Action No.: CV-2010-453

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S PETITION FOR
TEMPORARY RESTRAINING ORDER**

Defendant, Bank of America (“BOA”), without waving any rights or defenses, responds to Plaintiff’s, Charles Vaughan, Jr. (“Vaughan”), Petition for Restraining Order as follows:

1. Vaughan’s petition is due to be denied because, among other reasons, Vaughan cannot establish the necessary element of immediate, irreparable harm.
2. The initial foreclosure date of June 25, 2010, was canceled due to Vaughan’s written dispute. See Exhibit “A.”
3. No foreclosure took place on August 19, 2010, as alleged by Vaughan, and no foreclosure sale date has been reset. See Exhibit “B.”
4. Because BOA has not reset a foreclosure date, or foreclosed, Vaughan, as this Court has previously held, fails to “adequately show the presence of immediate, irreparable harm to warrant the court’s issuance of a Temporary Restraining Order.” Muhammad v. HSBC Bank, USA, N.A., 2009 WL 256275, *1 (S.D. Ala. 2009) (Court denied a temporary restraining order to halt a foreclosure where bank temporarily canceled the foreclosure sale).

WHEREFORE, Defendant Bank of America, requests this Court to deny Plaintiff’s request for a temporary restraining order.

Respectfully submitted,

s/Kenneth S. Steely
KENNETH S. STEELY (STEEK4183)
KIRKLAND E. REID (REIDK9451)
Attorneys for Bank of America

OF COUNSEL:

JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE, L.L.P.
P.O. Box 46
Mobile, Alabama 36601
(251) 439-7535 - Phone
(251) 433-1001 - Fax
ksteely@joneswalker.com
kreid@joneswalker.com

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2010, I electronically filed the foregoing using the CM/ECF system and I have mailed same by United States Mail, postage paid to the following:

Charles Vaughan, Jr.
27188 Mirage Lane
Daphne, AL 36526

s/Kenneth S. Steely



ANDY W. SAAG

ATTORNEY AT LAW

(205) 918-5045

asaag@sirote.com

June 11, 2010

VIA U.S. MAIL

Charles C. Vaughan Jr.
27188 Mirage Lane
Daphne, AL 36526

Our Client: BAC Home Loans Servicing, L.P. FKA Countrywide Home Loans
Servicing LP ("BAC")
Loan No: 47342871
Property Address: 27188 Mirage Lane, Daphne, AL 36526
RE: Qualified Written Request

Dear Mr. Vaughan:

I am writing to acknowledge receipt of your letter dated June 2, 2010. I have forwarded this correspondence to BAC for its review.

We have canceled the foreclosure sale scheduled for June 25, 2010. Once BAC has located the necessary files, they will respond to the qualified written request. In the meantime, please do not hesitate to contact our office at 205-918-5045 should you need anything additional.

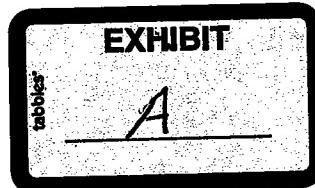
This communication is from a debt collector.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy W. Saag".

Andy W. Saag
FOR THE FIRM

AWS/ab



DOCSBHM\1709849\1\

LAW OFFICES AND MEDIATION CENTER
2311 HIGHLAND AVENUE SOUTH BIRMINGHAM, ALABAMA 35205
POST OFFICE BOX 55727 BIRMINGHAM, ALABAMA 35255-5727
TELEPHONE | 205.930.5100 FAX | 205.930.5101 URL | <http://www.sirote.com>
Birmingham | Huntsville | Mobile

Steely, Kenneth

From: Monaghan, Jamey [JMonaghan@Sirote.com]
Sent: Monday, August 23, 2010 12:17 PM
To: Steely, Kenneth; Warfield, Alan; Reid, Kirk
Cc: Saag, Andy; Brooks, Angela
Subject: RE: Charles Vaughan/BAC

It does not appear that we ever had a sale scheduled for 8/19.

Jamey Monaghan
Creditor Services
Coordinator
DI 205.918.5009
F 205.212.2825
JMonaghan@Sirote.com

http://www.sirote.com/

Sirote & Perrott, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205

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From: Steely, Kenneth [mailto:ksteely@joneswalker.com]
Sent: Monday, August 23, 2010 12:05 PM
To: Warfield, Alan; Monaghan, Jamey; Reid, Kirk
Cc: Saag, Andy; Brooks, Angela
Subject: RE: Charles Vaughan/BAC

Jamey / Andy,

The TRO was filed to prevent foreclosure on August 19. The info you sent was for the June foreclosure that was canceled. Do you have any other documents concerning another foreclosure date?

Thanks,

Kenneth

Direct: (251)439-7535

From: Warfield, Alan
Sent: Friday, August 20, 2010 10:53 AM
To: Monaghan, Jamey; Steely, Kenneth; Reid, Kirk
Cc: Saag, Andy; Brooks, Angela
Subject: RE: Charles Vaughan/BAC

Great, thanks as always. I suspect we'll be back in touch on this one.

Alan

From: Monaghan, Jamey [mailto:JMonaghan@Sirote.com]
Sent: Friday, August 20, 2010 10:26 AM
To: Warfield, Alan; Steely, Kenneth; Reid, Kirk
Cc: Saag, Andy; Brooks, Angela
Subject: FW: Charles Vaughan/BAC

Re: Charles C. Vaughan Jr. // 27188 Mirage Lane, Daphne, AL 36526 -- FC on hold for debt dispute

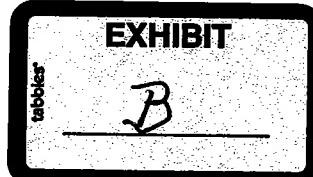
Hey Alan, we've been expecting you... Attached are the foreclosure docs. Please note that BAC is handling the QWR themselves and it has been assigned to Marla Kochevar. The response is due by next Friday, 8/27/2010. Please let us know if we need to do anything regarding the QWR.

Thank you,

Jamey Monaghan
Creditor Services
Coordinator
DI 205.918.5009
F 205.212.2825
JMonaghan@Sirote.com

http://www.sirote.com/

Sirote & Perrott, P.C.
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From: Warfield, Alan [mailto:awarfield@joneswalker.com]
Sent: Friday, August 20, 2010 9:06 AM
To: Monaghan, Jamey
Cc: Steely, Kenneth; Reid, Kirk
Subject: Charles Vaughn/BAC

Jamey:

We have a new BAC matter in the Southern District set for a PI hearing next week (Wednesday I think). Borrower is Charles Vaughn and the loan number is 47342871. Do you think you could send us what you guys have on it today? Looks like a 6/25 sale date was cancelled following a debtor dispute, so I'm guessing there will be some correspondence with Mr. Vaughn (who is pro se).

Thanks for the help.

Alan

Alan M. Warfield
Jones Walker
One Federal Place
1819 5th Avenue North, Suite 1100
Birmingham, AL 35203
205.244.5262 (direct dial)
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205.244.5200 (main number)
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Steely, Kenneth

From: Daum, Kelly J -Legal [kelly.j.daum@bankofamerica.com]
Sent: Tuesday, August 24, 2010 5:36 PM
To: Steely, Kenneth
Cc: Warfield, Alan; Reid, Kirk; McKown, Aaron - Legal
Subject: RE: Vaughan v Bank of America

Ken,

I have confirmed from foreclosure counsel that no sale date is scheduled at this time. There was a previous sale date of 6/25/10 which was cancelled because a QWR was received.

Kelly Jo Daum
Paralegal
Legal Department - Litigation
Bank of America Corporation
Mail Code: CA6-915-01-17
30870 Russell Ranch Road
Westlake Village, CA 91362
Tel: (818) 223-5375
Fax: (804) 264-0857
kelly.j.daum@bankofamerica.com

From: Steely, Kenneth [mailto:ksteely@joneswalker.com]
Sent: Tuesday, August 24, 2010 3:33 PM
To: McKown, Aaron - Legal; Daum, Kelly J -Legal
Cc: Warfield, Alan; Reid, Kirk
Subject: Vaughan v Bank of America
Importance: High

Aaron,

Any word on the Vaughan issue? The TRO hearing is set for 1:00pm (CST) tomorrow. Please confirm that no foreclosure sale was set for Aug 19, and that no foreclosure sale date is currently set. I will notify the Court in order to have the TRO request denied. Sirote confirmed that they did not set an Aug. 19 foreclosure date.

If you have any questions, please do not hesitate to contact me.

Thanks,

Kenneth S. Steely

Jones, Walker, Waechter, Poitevent,
Carrère, Denègre, L.L.P.
254 State Street
Mobile, AL 36603

Office: (251)432-1414
Direct: (251)439-7535
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